

Service Date: February 23 , 1988

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER of the Montana Public )  
Service Commission's Investigation of ) UTILITY DIVISION 87.9.51  
the Merger of the Pacific Power and )  
Light Company and the Utah Power and )  
Light Company.

In the Matter of the Application of )  
PC/UP&L Merging Corp. (to be renamed )  
PacifiCorp) to: (1) Issue its Common )  
Stock and Preferred Stock to effect )  
a merger with PacifiCorp and Utah ) UTILITY DIVISION  
Power & Light Company, (2) Assume ) DOCKET NO. 87.9.49  
all debt obligations of PacifiCorp ) ORDER NO. 5297a  
and Utah Power & Light Company, and )  
(3) Issue its securities under )  
authorizations previously granted )  
to PacifiCorp by the Commission. )  
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BACKGROUND

1. On or about August 12, 1987, the Pacific Power and Light Company and the Utah Power and Light Company announced publicly that they had reached a definite agreement to merge the two companies. On August 26, 1987, Frederic Reed, a PP&L Vice President, met publicly with the members of the Montana Public Service Commission (PSC or Commission) to discuss the impacts of the proposed merger upon the rates and services offered by PP&L in its Montana service territory.

At that time Mr. Reed indicated that he did not believe that the

merger would have any detrimental impacts upon PP&L's ratepayers in Montana.

2. On September 17, 1987, PC/UP&L Merging Corp. (to be renamed PacifiCorp) (PacifiCorp Oregon), a corporation organized and existing under and by virtue of the laws of the State of Oregon and qualified to transact business in Montana, filed with the Montana Public Service Commission its verified application, pursuant to Sections 69-3-501 through 69-3-507, MCA, requesting an order authorizing PacifiCorp Oregon to (1) issue not more than 128,000,000 shares of its \$3.25 par value common stock, not more than 126,533 shares of its \$100 par value 5% Preferred Stock, not more than 754,802 shares of its \$100 par value Serial Preferred Stock, and not more than 3,183,815 shares of its No Par Serial Preferred Stock to effect a merger of PacifiCorp (PacifiCorp Maine) and Utah Power & Light Company (Utah Power) with and into PacifiCorp Oregon; (2) assume all of the debt obligations of PacifiCorp Maine and Utah Power outstanding at the effective date of the proposed merger and to continue or create liens in connection therewith; and (3) issue its securities under authorizations previously granted to PacifiCorp Maine by the Commission, which authorizations have not yet been fully utilized.

The application is supported by exhibits, testimony and data in accordance with the rules and regulations of the Commission governing

the authorization of the issuance of securities by electric and gas utility companies operating within Montana.

For detailed information with respect to the general character of PacifiCorp Oregon's business and the territories to be served by it, reference is made to annual reports of PacifiCorp Maine on file with the Commission and the data filed with this application.

The application sets forth Counsel who will pass upon the legality of the proposed issuance, the other regulatory authorizations required, and the propriety of the proposed issue.

3. On September 28, 1987, the Commission voted to waive the 30 day deadline for consideration of such an application, extending the deadline to February 17, 1988. See Section 69-3-503, MCA.

4. On October 2, 1987, the Commission issued an order initiating an independent investigation of the extent of its jurisdiction and the ramifications of the proposed merger. The Commission determined that, at a minimum, the following issues should be addressed:

- 1) Does the Commission have jurisdiction over the proposed merger? That is, does review of the proposed merger fall under the Commission's statutory duty to

assure that ratepayers receive adequate service at reasonable rates?

- 2) If the Commission does have jurisdiction over the proposed merger, what further action is appropriate?

See Order No. 5298.

5. The securities application described above, Docket No. 87.9.49, was consolidated into the investigation docket for further consideration and final disposition.

6. On December 7, 1987, and pursuant to a Notice of Public Hearing, a hearing was held in Kalispell, Montana. Satellite public hearings were held in Kalispell and Libby, Montana, on the evenings of December 8 and 9, 1987, respectively.

#### FINDINGS

7. PacifiCorp Oregon is a corporation organized and existing under and by virtue of the laws of the State of Oregon and is qualified to transact business in the State of Montana.

8. PacifiCorp Oregon will be operating as a public utility as defined in Section 69-3-101, MCA, and is engaged in furnishing electric service in Montana, as PacifiCorp Maine.

9. The Commission has jurisdiction over the subject matter of the application under Section 69-3-102, MCA.

10. Pursuant to an Agreement and Plan of Reorganization and Merger (Merger Agreement), dated August 12, 1987, among PacifiCorp Maine, a Maine corporation, Utah Power, a Utah corporation, and PacifiCorp Oregon, PacifiCorp Maine and Utah Power will be merged with and into PacifiCorp Oregon. The outstanding shares of the capital stock of PacifiCorp Maine and Utah Power will be converted into shares of the capital stock of PacifiCorp Oregon as described in Section 1.3 of the Merger Agreement.

PacifiCorp Oregon will also assume all debt obligations of PacifiCorp Maine and Utah Power outstanding as of the effective date of the merger. As a result of this merger, the separate corporate existences of PacifiCorp Maine and Utah Power shall cease and thereupon PacifiCorp Maine, Utah Power and PacifiCorp Oregon will be a single corporation (renamed PacifiCorp) subject to the Restated Articles of Incorporation and Bylaws of PacifiCorp Oregon. By operation of law, all of the assets of PacifiCorp Maine and Utah Power will become assets of PacifiCorp Oregon. The merger also will have the effect of changing PacifiCorp Maine's state of incorporation from Maine to Oregon.

11. PacifiCorp Oregon was incorporated on August 11, 1987 as an Oregon corporation with 100 shares of no par value common stock, which are now owned by PacifiCorp Maine. These 100 shares will be canceled at the time of the merger. In order to effect the merger with PacifiCorp Maine and Utah Power, PacifiCorp Oregon will issue its common stock upon conversion of the common stocks of PacifiCorp Maine and Utah Power and will issue its preferred stocks of various classes and series upon conversion of the preferred stocks of PacifiCorp Maine and Utah Power. The application describes the conversion of stock and lists the classes and series of stock to be issued. As described in the Merger Agreement, PacifiCorp Oregon may be required to pay cash to holders of Utah Power preferred stock who exercise dissenters' rights and for fractional shares of Utah Power common stock that are converted in the merger.

12. Upon the effective date of the merger, PacifiCorp Oregon will be responsible for all debts, liabilities and obligations of PacifiCorp Maine and Utah Power, including all notes and first mortgage bonds. The application lists the series of debt obligations to be assumed by PacifiCorp Oregon. PacifiCorp Oregon will be required to execute appropriate supplemental indentures or other agreements to reflect such assumptions and any existing liens on the

properties of PacifiCorp Maine or Utah Power will continue as liens on the property of PacifiCorp Oregon.

13. PacifiCorp Maine has previously been granted authority from the Commission for the issuance of additional long and short-term debt, preferred stock, and common stock which has not been fully utilized. PacifiCorp Oregon requests that the existing authorities be transferred to PacifiCorp Oregon as of the time of the merger.

14. PacifiCorp Maine, doing business as Pacific Power & Light Company, presently provides retail electric service to approximately 28,000 consumers in northwest Montana. It also provides retail electric service in the states of Oregon, Washington, Wyoming, California and Idaho. Prior to the effective date of the proposed merger, PacifiCorp Oregon will file initial rate schedules with the Commission that are identical to existing rate schedules of Pacific Power & Light Company and will qualify to do business in Montana as Pacific Power & Light Company.

Utah Power does not provide utility service in the State of Montana. Utah Power provides retail electric service in the states of Utah, Idaho, and Wyoming.

15. The securities proposed to be issued by PacifiCorp Oregon do not, in the aggregate, exceed the fair value of the properties and business of the merged companies.

16. The issuance of an order authorizing the proposed financing does not constitute agency determination/approval of: 1) any issuance-related ratemaking issues, which issues are expressly reserved until the appropriate proceeding; or 2) the extent of the Commission's jurisdiction, if any, over the proposed merger, and what action by the Commission is appropriate.

#### CONCLUSIONS OF LAW

1. The proposed issuance of capital stock, assumption of debt, and transfer of authority previously granted to PacifiCorp Maine, to which the application relates will be for lawful objects within the corporate purposes of PacifiCorp Oregon. The method of financing is proper.

2. The proposed issuance of capital stock, assumption of debt and transfer of authority previously granted to PacifiCorp Maine, is consistent with the public interest.

3. The issuance of this order does not constitute determination/approval of either any issuance-related ratemaking issues, or

the extent of the Commission's jurisdiction, if any, over the proposed merger which underlies the proposed securities transaction.

ORDER

IT IS THEREFORE ORDERED by the Commission that:

1. The application of PacifiCorp Oregon, filed on September 17, 1987 for authority to issue not more than 128,000,000 shares of its \$3.25 par value common stock, not more than 126,533 shares of its 5% Preferred Stock, not more than 754,802 shares of its Serial Preferred Stock, and not more than 3,183,815 shares of its No Par Serial Preferred Stock pursuant to Sections 69-3-501 through 69-3-507, MCA, to effect the merger of PacifiCorp Maine and Utah Power with and into PacifiCorp Oregon, is approved.

2. The application of PacifiCorp Oregon to assume all of the debt obligations of PacifiCorp Maine and Utah Power outstanding as of the effective date of the merger is approved.

3. The application of PacifiCorp Oregon to issue its securities under authorizations previously granted to PacifiCorp Maine by the Commission is granted and those prior orders shall remain in full force and effect.

4. PacifiCorp Oregon shall file the following as they become available:

- a. Verified copies of any agreement entered into in connection with the issuance of the securities approved herein.
- b. Verified copies of any agreement entered into in connection with the assumption of debt obligations approved herein.
- c. Verified copies of any agreement entered into in connection with the issuance of securities by PacifiCorp Oregon under authorizations previously granted by the Commission to PacifiCorp Maine.

5. Issuance of this order does not constitute acceptance of PacifiCorp Oregon's exhibits or other material accompanying the application for any purpose other than the issuance of this order.

6. Approval of the security transaction authorized shall not be construed as precedent to prejudice any future action of this Commission, including appropriate ratemaking treatment or resolution of the remaining issues in this consolidated docket.

7. Section 69-3-507, MCA, provides that neither the issuance of securities by PacifiCorp Oregon pursuant to the provisions of this order, nor any other act or deed done or performed in connection with the issuance, shall be construed to obligate the State of Montana to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed. construed to obligate the State of Montana to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed.

8. This order shall be effective upon the issuance of a subsequent Order in this Docket approving the merger of PacifiCorp Maine and Utah Power with and into PacifiCorp Oregon.

9. This approval extends to de minimis variations from the financing proposal contained in the application filed herein, which are necessary to effectuate the merger.

DONE IN OPEN SESSION at Helena, Montana, this 16th day of February 1988, by a 5 to 0 vote.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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CLYDE JARVIS, Chairman

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JOHN B. DRISCOLL, Commissioner

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HOWARD L. ELLIS, Commissioner

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TOM MONAHAN, Commissioner

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DANNY OBERG, Commissioner

ATTEST:

Ann Purcell  
Acting Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.